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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,217	03/22/2004	Greg E. McRae	091078.1259	3298

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3781

NOTIFICATION DATE	DELIVERY MODE
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01/29/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptomail1@bakerbotts.com
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Office Action Summary

Application No.

10/807,217

Applicant(s)

MCRAE, GREG E.

Examiner

/Stephen J. Castellano/

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 15, 16 and 19-44 is/are pending in the application.
- 4a) Of the above claim(s) 37-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 15, 16, 19-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 13, 14, 17 and 18 are canceled. Claims 1-12, 15, 16 and 19-44 are pending.

Applicant's election of claims 1-36 in the reply filed on July 10, 2007 is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 37-44 have been withdrawn.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12, 15, 16, 19-34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over German reference No. (DE 20004612) to Kewitz in view of Fuchs and Anderson et al. (Anderson).

Kewitz discloses an underground tank shroud assembly comprising a shroud 11 with top and bottom regions and a shroud lid 12, the lid is pivotable about a hinge 13. Kewitz discloses the shroud assembly in combination with an underground tank 20 with a riser 15, the riser is enclosed by the shroud and lid. Kewitz discloses the invention except for the shroud lid having two hinge couplings. Fuchs teaches a cover arrangement capable of performing as a shroud with a lid having two hinge couplings. It would have been obvious to modify the single hinge coupling arrangement of Kewitz to have a second additional hinge coupling to provide the ability of rotating the shroud lid to either of two opposed sides of a shroud to alter the access to prevent wind or gravity from closing the top shroud opening.

If it should be deemed that the hinge of Fuchs is not a hinge coupling. Anderson teaches a hinge 26 with a bolt and nut connection (see Fig. 1 and 2 of Anderson) that allows rotation of the lid about the bolt axis and is coupled such that lifting upward on the lid will not disengage the nut and bolt connection with the hinge brackets 22. Anderson's hinge connection can be disassembled by removing the nut and sliding the bolt out of the openings in the brackets 22, at which time, the lid could be lifted off without interference from a bolted connection. It would have been obvious to add the nut and bolt connection to both of Fuchs' rotation/fixation devices to add a more secure lid assembly that can't be removed or lifted as quickly or without the use of hand tools to remove the nuts.

Re claims 5-7 and 28-30, Official notice was taken in the non-final Office action mailed April 11, 2007 that plastic shroud materials and specifically, polyethylene and polyurethane, are well known. It would have been obvious to modify a metal shroud to be plastic to provide weight reduction and cost reduction due to lighter, less expensive plastic material. Applicant has challenged the Official notice. Brewer (5713388) teaches a shroud (base 8) and lid (cap 10) made of polyethylene and polyurethane (see col. 4, lines 13-16). Brewer is evidence that supports the Official notice.

Re claims 8, 19 and 31, Fuchs teaches a conical shaped shroud. It would have been obvious to modify the shroud to be conical to widen the top opening of the shroud to provide easier access and more space at the top opening.

Re claims 10, 21 and 33, Official notice was taken in the non-final Office action mailed April 11, 2007 that LPG storage is well known. It would have been obvious to modify the underground tank to be capable of storing LPG as a matter of design choice to adapt the tank to

store the desired product. Applicant has challenged the Official notice. Poillucci (EP 0752555) teaches a tank for liquefied pressurized gas (LPG). Poillucci is evidence that supports the Official notice.

Re claims 9, Kewitz discloses the base region configured to conform to a convex top tank surface. Re claim 11, Kewitz discloses the shroud bracket slot 21 and tank bracket 14.

Re claim 12, It would have been obvious to modify the opening dimensions as a matter of design choice to fit the equipment (riser, valves etc.) to be housed therein as a matter of design choice and no bigger than necessary to reduce the waste of material.

Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kewitz in view of Fuchs and Anderson as applied to claim 24 above, and further in view of Palazzo (6024243).

The combination discloses the invention except for the hole in the lid. Palazzo teaches a hole in lid 66 for riser 74 (see Fig. 8). It would have been obvious to provide an access hole in the lid to provide access to the riser to alleviate the need to open the lid each time the riser needs to be accessed or to vent the riser to the atmosphere.

Applicant's arguments filed November 21, 2007 have been fully considered but they are not persuasive.

Re the 103 rejections, applicant argues that modifying Kewitz to include the rotation and fixation devices of Fuchs would change the operation of Kewitz. Applicant has misinterpreted the statement of rejection which states a different modification. The modification is a modification of the number of hinge couplings. Kewitz is modified to have two hinge couplings, two Kewitz-type hinge couplings not two Fuchs-type hinge couplings.

Applicant finds that the teachings of Anderson conflict with Fuchs. However, when Anderson is used in a 103 rejection, Anderson modifies the Kewitz hinges not the hinges of Fuchs.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Stephen J. Castellano/ whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen J. Castellano/
Primary Examiner
Art Unit 3781

sjc